

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 486

TIGHE E. WOODS, ACTING HOUSING EXPEDITER,
OFFICE OF THE HOUSING EXPEDITER,
APPELLANT

vs.

THE CLOYD W. MILLER COMPANY, A CORPORATION,
AND CLOYD W. MILLER

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF OHIO

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1 [Caption omitted.]

2 In the District Court of the United States for the Northern
District of Ohio, Eastern Division

Civil Action No. 25073

TIGHE E. WOODS, ACTING HOUSING EXPEDITER, OFFICE OF THE
HOUSING EXPEDITER, PLAINTIFF

vs.

THE CLOYD W. MILLER COMPANY, A CORPORATION, CLOYD W.
MILLER, DEFENDANTS

Docket entries from July 11, 1947 to December 18, 1947

- 7/11/47—Complaint filed.
- 7/11/47—Motion for preliminary injunction filed.
- 7/11/47—Summons issued. 2 copies of summons with 3 copies
of Motion to the Marshal.
- 7/18/47—Summons retn. & filed. Served 7/14/47. Fees \$4.66.
- 7/18/47—Motion re preliminary injunction retn. & filed. Served
7/14/47. Fees \$4.00.
- 7/21/47—Stipulation & Order granting defendant leave to move
or plead by 9/1/47 filed, Jones, J. Noted 7/21/47.
Notice waived.
- 7/21/47—Stipulation of facts filed.
- 7/21/47—Order of Preliminary Injunction defendant restrained
from accepting rent in excess of that prescribed by
the Controlled Housing Rent Regulation etc. filed
& ent. Jones, J. Noted 7/21/47. True copy mailed
to defendant.
- 8/28/47—Answer filed. Copy acknowledged 8/27/47.
- 9/29/47—Brief of defendants filed. Copy acknowledged 9/29/47.
- 10/31/47—Stipulation & Order extending time for filing plain-
tiff's brief to Dec. 1, 1947, filed, Wilkin, J. Noted
10/31/47. Notice waived.
- 11/14/47—Memorandum for Plaintiff filed. Copy served
11/14/47.
- 11/17/47—Stipulation & Order that Defendant may have leave
to file reply brief by 11/19/47 filed, Jones, J. Noted
11/18/47. Notice waived.
- 11/19/47—Reply brief of defendants filed. Copy acknowledged
11/19/47.
- 11/20/47—Memorandum Opinion filed, Jones, J. (Preliminary
injunction dissolved; complaint dismissed.) Copies
to counsel.

11/28/47—Finding of facts and conclusion of Law lodged. Copy served 11/28/47.

3 12/ 1/47—~~Motion of~~ plaintiff for substitution of party plaintiff filed. Copy mailed 11/28/47.

12/ 1/47—Order substituting party plaintiff filed. Jones, J. Noted 12/1/47.

12/ 1/47—Findings of Fact and Conclusions filed, Jones, J.

12/ 1/47—Order finding Housing & Rent Act of 1947 unconstitutional; dissolving temporary restraining order and dismissing complaint at costs of plaintiff filed & ent. Jones, J. Noted 12/1/47.

12/ 8/47—Motion of plaintiff for stay of execution filed.

12/ 8/47—Memorandum Opinion filed, Jones, J. (Stay of execution granted for 30 days from order to stay.) Copies to counsel.

12/ 8/47—Order staying execution of order entered Dec. 1, 1947, dissolving preliminary injunction and dismissing complaint until appeal therefrom is docketed in Supreme Court, but not to exceed thirty days from date hereof, filed & ent., Jones, J. Noted 12/8/47. Copies to counsel.

12/17/47—Defendants' Agreement of Jurisdiction filed.

12/17/47—Petition for Appeal filed.

12/17/47—Assignment of Errors filed.

12/17/47—Statement re Jurisdiction filed.

12/17/47—Order allowing appeal to the Supreme Court of U. S. filed & ent., Jones, J. Noted 12/17/47.

12/17/47—Citation issued.

12/17/47—Statement re Para. 3, Rule 12 of Supreme Court Rules filed.

12/17/47—Praecipe for Transcript of Record filed.

12/17/47—Proof of Service of above papers filed.

12/18/47—Transcript of Proceedings filed.

4 In the District Court of the United States for the
Northern District of Ohio, Eastern Division

[File endorsement omitted]

Civil Action—File No. 25073

FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE OF THE HOUSING
EXPEDITER, PLAINTIFF

vs.

THE CLOYD W. MILLER COMPANY, A CORPORATION, CLOYD W.
MILLER, 3065 LINCOLN BOULEVARD, CLEVELAND HEIGHTS, OHIO,
DEFENDANTS

Complaint

Filed July 11, 1947

1. Plaintiff is presently the duly appointed, qualified and Act-
ing Housing Expediter of the Office of the Housing Expediter.

2. Plaintiff invokes the jurisdiction of this Court under sub-
section (b) of section 206 of the Housing and Rent Act of 1947,
hereinafter referred to as the "Act".

3. At all times mentioned herein, there was continuously in full
force and effect, pursuant to section 204 of the Act, the Controlled
Housing Rent Regulation (12 F. R. 4331) and the Rent Regula-
tion for Controlled Rooms in Rooming Houses and other Estab-
lishments (12 F. R. 4302), hereinafter called the "Regulations",
establishing maximum rents for the use and occupancy of con-
trolled housing accommodations within the Defense-Rental Area
of Cleveland, Ohio, which include premises 1871 E. 97th Street
and 9797 Newton Avenue, City of Cleveland, owned and/or oper-
ated by the defendants.

4. In plaintiff's judgment, the defendants have engaged in or
are about to engage in acts and practices which constitute or will
constitute a violation of section 206 (a) of the Act, section 2 (a)
of the Rent Regulation for Controlled Rooms in Rooming Houses
and other Establishments, and section 2 (a) of the Controlled
Housing Rent Regulation issued pursuant to the Act, in that while
the said Act and Regulations were in effect and the aforesaid
maximum rentals prescribed thereunder were in effect, defend-
ants demanded from the tenants of the aforesaid
5 dwelling units for their use and occupancy thereof, rates
of rental in excess of the maximum rates of rental estab-
lished and permitted by the said Act and Regulations.

5. At all such times, the Regulations prescribed the following
maximum rentals for the dwelling units in the above premises as
listed below:

1871 East 97th Street

Apt. No. 1	\$25.00 per month.
No. 2	30.00 per month.
No. 3	22.50 per month.
No. 4	80.00 per month.
No. 5	80.00 per month.
No. 6	80.00 per month.
No. 7	50.00 per month.
No. 8	55.00 per month.
No. 9	55.00 per month.

9797 Newton Avenue

Apt. No. 10	\$55.00 per month.
No. 11	50.00 per month.
No. 12	50.00 per month.
No. 13	50.00 per month.
No. 14	50.00 per month.
No. 15	55.00 per month.

1871 East 97th Street

Room No. 16	\$3.50 per week.
No. 17	3.50 per week.
No. 18	3.50 per week.
No. 19	3.50 per week.
No. 20	3.50 per week.

Wherefore, the plaintiff demands:

1. A preliminary and final injunction enjoining and restraining the defendants, their agents, servants, employees and all persons in active concert or participation with the defendants from:

(a) Soliciting, demanding, accepting, or receiving any rent in excess of the maximum rent prescribed by the Controlled Housing Rent Regulations as heretofore or hereafter amended, or in excess of the maximum rent permitted by any other Regulation or Order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended or extended or superseded, or from otherwise violating the Regulations as heretofore or hereafter amended, or from violating any other Regulation heretofore or hereafter adopted pursuant to the Act as heretofore or hereafter amended or extended.

2. Such other, further and different relief as to the Court appears warranted in the premises.

Dated: July 10, 1947.

(S) PAUL MARSHALL,
Chief, Rent Enforcement Division,

(S) Sanford S. Simms,
SANFORD S. SIMMS,
Enforcement Attorney,

(S) A. L. Greenspun,
A. L. GREENSPUN,
Enforcement Attorney,
Of Counsel for Plaintiff.

Address: Office of the Housing Expediter, Office of Rent Control, Regional Rent Office, Enforcement Division, 322 Union Commerce Building, Cleveland 14, Ohio. Telephone: Cherry 7900.

7

In United States District Court

[Title omitted.]

[File endorsement omitted.]

Motion for preliminary injunction

Filed July 11, 1947

Plaintiff moves the Court for a preliminary injunction:

1. Enjoining defendants, their agents, servants, employees and all persons in active concert or participation with the defendant, from:

(a) Soliciting, demanding, accepting or receiving any rent in excess of the maximum rent prescribed by the Controlled Housing Rent Regulations as heretofore or hereafter amended, or in excess of the maximum rent permitted by any other Regulation or Order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended or extended or superseded, or from otherwise violating the Regulations as heretofore or hereafter amended, or from violating any other Regulation heretofore or hereafter adopted pursuant to the Act as heretofore or hereafter amended or extended.

The within motion is made upon the grounds and for the reasons set forth in the affidavit of A. L. Greenspun, Attorney for the Housing Expediter, which affidavit is hereby incorporated herein by reference and made a part hereof.

Dated: July 10, 1947.

(S) PAUL MARSHALL,
Chief, Rent Enforcement Division,

(S) Sanford S. Simms,
SANFORD S. SIMMS,
Enforcement Attorney,

(S) A. L. Greenspun,
A. L. GREENSPUN,
Enforcement Attorney,
Of Counsel for Plaintiff.

Address: Office of the Housing Expediter, Office of Rent Control, Regional Rent Office Enforcement Division, 322 Union Commerce Building, Cleveland 14, Ohio. Telephone: CHerry 7900.

8 *Notice of hearing*

To THE CLOYD W. MILLER COMPANY, A CORPORATION,
CLOYD W. MILLER, 3065 Lincoln Boulevard,
Cleveland Heights, Ohio.

Please take notice that the undersigned will bring the within and foregoing Motion on for Hearing before this Court, at the Federal Building, City of Cleveland, State of Ohio, on the 21st day of July 1947 at 10:30 o'clock a. m., or as soon thereafter as counsel can be heard.

- Dated this 10th day of July 1947.

(S) PAUL MARSHALL,
Chief, Rent Enforcement Division,

(S) Sanford S. Simms,
SANFORD S. SIMMS,
Enforcement Attorney,

(S) A. L. Greenspun,
A. L. GREENSPUN,
*Enforcement Attorney,
Of Counsel for Plaintiff.*

Address: Office of the Housing Expediter, Office of Rent Control, Regional Rent Office, Enforcement Division, 322 Union Commerce Building, Cleveland 14, Ohio. Telephone: Cherry 7900.

U. S. Marshal's return

THE UNITED STATES OF AMERICA,
Northern District of Ohio:

Received this writ at Cleve., O., on 7/11/47 and on 7/14/47 at Cleve. Hts., O., I served the within named Cloyd W. Miller, by handing to his sister-in-law, Miss G. L. Burke, personally and at the same time I served the within Cloyd W. Miller Co., by handing to Miss G. L. Burke, Sect'y & Treas. of said Cloyd W. Miller Co., personally a true copy of this writ.

Service: \$4.00.

JOHN WEIN,
U. S. Marshal.
NORMAN BLACK,
Deputy.

[File endorsement omitted.]

9

In United States District Court

[Title omitted.]

Affidavit of A. L. Greenspun in support of plaintiff's motion for preliminary injunction

STATE OF OHIO,

County of Cuyahoga, ss:

A. L. Greenspun, being first duly sworn, deposes and says:

1. At all times mentioned herein, he has been employed as an Attorney by the Office of the Housing Expediter in the Cleveland Regional Office thereof; that he makes this affidavit in support of the within Motion for Preliminary Injunction prayed for by plaintiff.

2. On July 8, 1947, affiant, in his official capacity aforesaid, commenced and directed an investigation of certain alleged violations by defendants herein of the Rent Regulation for Housing and the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments, effective under the Housing and Rent Act of 1947. Such investigation was continued until the date hereof.

3. The aforesaid Regulations, effective under the Housing and Rent Act of 1947, provides in substance in part that, regardless of any contract, agreement, lease or other obligation heretofore or hereafter entered into, no person shall offer, demand or receive any rent for or in connection with the use or occupancy on and after the effective date of said Regulations, of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by these Regulations.

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4. The defendants, The Cloyd W. Miller Company, a Corporation, and Cloyd W. Miller, individually, were and are landlords and/or operators of housing accommodations subject to the Regulations at all times material herein and located within the Cleveland, Ohio Defense-Rental Area and described as follows: 1871 East 97th Street, Apartments 1 to 9 inclusive, 9797 Newton Avenue, Apartments 10 to 15 inclusive, 1871 East 97th Street, Rooms 16 to 20 inclusive, Cleveland, Ohio.

5. Said defendants have demanded and unless enjoined and restrained, will continue to demand and will receive for the use or occupancy of said housing accommodations from the tenants thereof, rates of rent in excess of the maximum rentals established by the Regulations. The amount so demanded increases the rent of apartment units 1 to 15, inclusive by forty percent (40%), and increases the rent of room units 16 to 20, inclusive by sixty percent (60%), in excess of the maximum legal rent thereof.

A copy of such demand, upon said tenants, is attached hereto & marked Exhibit I and made a part hereof.

(S) A. L. GREENSPUN.

Sworn to before me and subscribed in my presence this 10th day of July 1947.

(S) SOL W. WYMAN,
Notary Public.

My commission expires May 1, 1950.

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Exhibit I to affidavit

CLEVELAND 18, OHIO, July 2, 1947.

*To all tenants of
The Cloyd W. Miller Co.,
1871 East 97th Street,
Cleveland, Ohio.*

GENTLEMEN: The stinkers in Washington have enacted a new Rent law playing hob further with rental property; the most cowardly smart trick they could cook up in five months of discussion and debate. Ostensibly for the dear people's benefit, let us see how the people will fare. The stinkers also enacted a law to raise their own salaries \$2,500 annually, tax exempt, while being *smothered* with evidence of enormously increased costs of rental property operation.

The new Rent law asks us and you to gamble on their conduct next February. Do you trust them? We do not. Will they let this new law die February 29, 1948, or extend it further?

If we would accept 15% increase now you would enjoy rent to December 31, 1948, for 18 more months, at 40% below what your space is worth in a free market. No thanks. No temporary rabbit could have been pulled out of any hat to assure more dissatisfaction among both tenants and landlords. We both are pawns merely of Congressmen in this game of trying to escape economic responsibility for rental property.

Since we, as yet, own the property, we will not ask you whether you "want to pay more." When, if ever, the time comes that our property is restored to our control we will advise you what your rents will be, based upon the true free market value which kept full occupancy in this building for thirty years, good times and bad.

The stinkers in Washington are only after your votes. They do not give a damn for your social or economic welfare, or *your housing standards*. They all know the only way housing standards may be improved, costs lowered, more buildings built, but none of them have the guts to express themselves publicly. This is their cloakroom prerogative.

Rent-control in five years has permitted and encouraged you to *live up* an important share of your present home—that visible sign of dignity, cleanliness, good repair, wholesomeness which distinguished our apartment house for years. We expect you will be leaving as soon as convenient and we do not blame you. If you buy you will realize fully what increased costs mean. Likewise, if you rent new property you will realize this. Meanwhile, the building you occupy has been deprived of physical maintenance necessary to keep it up *for the future*. This maintenance loss seems at first glance to be your immediate gain but that is the deception which has assured the stinkers your votes. Actually, you have lost this sum by reduction of general housing standards which may be irrecoverable in your day. This will be clearer to you when you leave us—wherever you go. Who is the loser? You or the landlord? The total loss to the Nation due to undone maintenance during rent control aggregates over \$20,000,000,000. Who do you think will restore this sum by sweat and tears? It is the income from these buildings which maintain them and encourage new investors to build. When income is not sufficient, rental property sickens and dies.

Rent control is a ghastly economic deceit, a socialistic gesture to redistribute wealth, the effect of which is to destroy, not create. The reiters are the real losers. It has been so for 25 years in England and France, now wallowing in the gutters of socialism. Peoples in other lands for centuries have been led into social and economic decline by paternalistic governments. Rent control is one of the steps. It looks like our people are moving rapidly toward more and more government regimentations, the last election 12 notwithstanding. Landlords are powerless to stop this trend; in fact, as victims of this revolutionary public exploitation, we are apt to prolong it. Until the cow is sucked dry. Unrestricted competition and a free market always housed Americans better than peoples elsewhere in the world. I knew last February and March in Washington that the 32,000,000 votes of tenants would scare the stinkers sufficiently to retain rent control. They were looking for "outs." There are none. If you want better and cheaper housing you will have to register your disapproval of this socialism. Temporarily you will have to pay more rent until the market supplies a stable vacancy ratio. Shortages created by the war and labor monopolies' subversive practices cannot be cured overnight.

We have lost interest in our building completely. Six or seven years ago we made plans to modernize it, including kitchens and bath rooms, to bring it up to present day standards insofar as possible. This building could very well house our class of tenants for many years at reasonable prices, but the politicians have ruled otherwise. They have decreed its degrading and reduction of the

standards we long maintained. We shall dispose of the property when opportunity offers, as we do not intend to operate a flop house, and that is all we will have very soon at the rate of debilitation the building has suffered during rent control. The public teat suckers in Washington got their stomachs filled with their \$2,500 per year raise—but they won't fill yours for any great while out of this property because very soon there will be nothing more to consume that will satisfy your tastes.

It is revolting to me what a hell of an economic debacle the New Deal achieved. The stinkers in legislative bodies seem not to have the courage it takes *at cross roads in the lives of nations*. Maybe the people who elect them stink a little themselves. As Voltaire said, "It is hard to free fools from the chains they revere."

This social nonsense of preempting our property has ceased to be funny. Owners, we set our charges for space for August 1947 and thereafter until further notice at 40% higher for suites, and 60% higher for furnished rooms. We shall hold each tenant responsible for the increase, and if possible make you all parties to a constitutional test of the law. You have already accepted about \$10,000 of rebates in rent below fair competitive market values, approximately one-third of which has accrued since the war emergency is over. This outrageous public expropriation of our property reaches the pinnacle of absurdity in the device which transfers the burden upon us to "*ask you what you want to pay*." We will tell you later how the advances may be escrowed so the case may avoid any prosecution reprisal against us by the vicious stooges in government who so gleefully undertake the task to which they have been assigned.

Sincerely,

CLOYD W. MILLER,
President, The Cloyd W. Miller Co.,
3065 Lincoln Boulevard, Cleveland 18, Ohio.

Copy to each Congressman on Banking and Currency Committees of Senate and House.

Copies to press.

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In United States District Court

[Title omitted.]

[File endorsement omitted.]

Stipulation of facts

Filed July 22, 1947

Duly authorized counsel for the parties herein do hereby stipulate that: for the purpose of the Motion for Preliminary Injunction

1. The defendant, The Cloyd W. Miller Company, a corporation, is the owner of the housing accommodations located at 1871 East 97th Street and 9797 Newton Avenue, Cleveland, Ohio, within the Cleveland Defense-Rental Area; and that the defendant, Cloyd W. Miller, is the president and duly authorized agent of The Cloyd W. Miller Company, a corporation; and that The Cloyd W. Miller Company, a corporation, and Cloyd W. Miller individually are the landlords of said housing accommodations.

2. The maximum legal rents for the said housing accommodations, as fully set forth in the Complaint, and as referred to in plaintiff's motion for a preliminary injunction, are correct, having been so registered by the defendants, and are the maximum legal rents as established in the Rent Regulation.

3. The Housing and Rent Act of 1947 was effective July 1, 1947 and the Controlled Housing Rent Regulation and the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments became effective July 1, 1947.

4. The letter dated July 2, 1947, addressed to "All tenants of The Cloyd W. Miller Company, 1871 East 97th Street," attached to the affidavit of A. L. Greenspun and to the motion for preliminary injunction, is a true and correct copy of the letters prepared and mailed by the defendants to all of the tenants residing in the housing accommodations herein referred to.

14 5. The signing of this Stipulation shall in no way be construed as a waiver by the defendants of their right to contest the constitutionality of the Housing and Rent Act of 17 or the Emergency Price Control Act of 1942, as amended.

PAUL MARSHALL,
Chief, Enforcement Division.

(S) Sanford S. Simms,
SANFORD S. SIMMS,
Enforcement Attorney.
Of Counsel for Plaintiff.

(S) Paul Knight,
PAUL S. KNIGHT,
Of Counsel for Defendant.

15 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Order of preliminary injunction

Filed July 21, 1947

This cause came on for hearing on motion of plaintiff for preliminary injunction herein, affidavit, statements of counsel, and evidence submitted in open court.

In consideration whereof the Court finds that the plaintiff's motion is well founded and that defendants have engaged in acts and practices which constitute violations of the provisions of the Housing and Rent Act of 1947, and the Controlled Housing Rent Regulation and the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments, issued pursuant to said Act.

The Court further finds that the defendants, The Cloyd W. Miller Company, a corporation, and Cloyd W. Miller are the landlords of housing accommodations situated at 1871 East 97th Street and 9797 Newton Avenue, Cleveland, Ohio, within the Cleveland Defense-Rental Area; and that the defendants, The Cloyd W. Miller Company and Cloyd W. Miller, since the effective date of said Regulations, have demanded from tenants for the use and occupancy of said housing accommodations rent in excess of the maximum legal rent established therefor by said Regulations; in consequence whereof, the Court finds that the defendants have violated the Housing and Rent Act of 1947 and the Regulations aforesaid, issued pursuant to said Act.

Now, therefore, it is Ordered, Adjudged, and Decreed that the defendants, The Cloyd W. Miller Company, a corporation, and

16 Cloyd W. Miller, their agents, servants, employees, and all persons in active concert or participation with said defendants be, and they are hereby, enjoined from directly or indirectly soliciting, demanding, accepting or receiving any rent in excess of the maximum rent prescribed by the Controlled Housing Rent Regulation and the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments, as heretofore or hereafter amended, or in excess of the maximum rent permitted by any other Regulation or Order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended or extended or superseded.

And this order shall be and remain in full force and effect until the further order of the Court.

(s) PAUL JONES,
Judge, United States District Court.

Entered: _____, 1947.

Approved and notice by the Clerk is hereby waived.

PAUL MARSHALL,
Chief, Enforcement Division,
SANFORD S. SIMMS,
Enforcement Attorney,
Of Counsel for Plaintiff.

PAUL S. KNIGHT,
Of Counsel for Defendant.

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In United States District Court

[Title omitted.]

[File endorsement omitted.]

Answer

Filed Aug. 28, 1947

FIRST DEFENSE

1. The complaint fails to state a cause of action against defendants upon which relief can be granted.

2. This honorable court is without jurisdiction of the subject matter set forth in the complaint, or to grant relief thereon for the reason that Sections 206, 202, 204, and 209 of the Housing and Rent Act of 1947 are invalid and contravene the Constitution of the United States, as more particularly set forth below.

SECOND DEFENSE

3. Defendants admit that they have notified the tenants in the housing accommodations at No. 1871 East 97th Street and 9797 Newton Avenue, Cleveland, Ohio, that the rents for such accommodations are increased in excess of the rentals set forth in Paragraph 5 of the complaint but deny that they intend to engage in any acts or practices which constitute a violation of the Act, while it is in effect.

4. Defendants admit that the regulations referred to in Paragraph number 4 of the complaint, were, if valid, in full force and effect at the times mentioned but assert that these regulations are invalid and void and of no effect and are violative of the Constitution of the United States, as more particularly set forth below.

5. Defendants admit that the rentals listed in Paragraph number 5 of the Complaint are the maximum rentals attempted to be established under the regulations and the Act for defendant's housing accommodations, but assert that both the establishing
18 thereof and the maximum rentals are invalid, void and of no effect and are in violation of the Constitution of the United States as more particularly set forth below.

THIRD DEFENSE

6. Defendant, The Cloyd W. Miller Company, is the owner and operator of an apartment building situated at East 97th Street and Newton Avenue in the City of Cleveland, County of Cuyahoga and State of Ohio, in which are the housing accommodations specified in the complaint and its sole business and operation is the renting of these suites and rooms and servicing and maintaining

the building and suites, and its entire and sole income is derived from the rentals.

7. Defendant, The Cloyd W. Miller Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio.

8. Defendant's building is situated entirely within the State of Ohio and defendant's business and operations are conducted exclusively within the State of Ohio and are strictly intra-state in character, the right to regulate which is reserved by the Constitution of the United States to the States.

9. The Housing and Rent Act of 1947 fixes the maximum rents that defendant may demand and receive for its housing accommodations at the maximum rents established under the Emergency Price Control Act of 1942, which are approximately the current rentals as of July 1, 1941, and the Act and the regulations thereunder prevent defendant and prohibit it from demanding and receiving a fair rental or a rental that is the fair market value for its suites and rooms, and interfere with and prohibit its proper, reasonable and legal use of its property.

10. The income from rentals that defendant derives month by month from its apartment building is its property and is part and parcel of its ownership of its building and each denial by the Act and regulations of its right to the reasonable market value rental is the taking of its property without due process of law.

10 11. Defendant's apartment building has been occupied at all times since its construction at practically one hundred per cent of its capacity. Since the maximum rents were established at July 1, 1941, levels, the expense of heating, servicing, and maintaining the building, suites, and rooms has greatly increased and the net income of defendant from such rentals has decreased, although the suites and rooms are readily rentable, but for the Act, at substantially higher, but reasonable, rentals. The effect of the Act and the regulations is to take defendant's private property without due process of law and without just, or any, compensation.

FOURTH DEFENSE

12. Title II of the Housing and Rent Act of 1947, in part, defines housing accommodations; controlled housing accommodations and defense rental areas, and prescribes therefor maximum rentals, limits and restricts rentals, restricts the owners of such rental property, both as to the amount of rentals the owner can demand and receive and as to the recovery of possession of such rental property and authorizes regulations and legal action for the enforcement thereof; and in these respects, as well as other respects, violates the Constitution of the United States and is void and of no effect in that the Act exceeds the power of the Congress,

violates the Fifth and the Tenth Amendments thereto and is not authorized by any other provision of the Constitution, and violates other provisions of the Constitution.

13. The Act and the regulations concern residential property, controlled housing accommodations, exclusively within the territorial limits of the several States, the regulation of which is reserved by the Constitution of the United States to the States, and the Constitution does not, either expressly or impliedly, grant to the Congress the power to regulate or legislate concerning such matters, and the Act and the regulations violate the Tenth Amendment to the Constitution.

14. Section 202 (c) of the Act in defining "controlled housing accommodations" upon which the restrictive provisions of the Act operate, excepts therefrom any housing accommodations (1) in any hotel, (2) in any motor court or tourist home, (3) any
20 that were completed or converted on or after February 1, 1947, and (4) any that were not rented on February 1, 1945, or thereafter to and including January 31, 1947, and the Act thus discriminates against defendant and violates Section 11 of Article IV of the Constitution of the United States and denies defendant the equal protection of the law.

15. Sections 202, 204, 205, 206 and 209 of the Act and the regulations thereunder, deny defendant, to its irreparable damage, its lawful right to sell the use of its housing accommodations in a lawful and reasonable manner and to secure therefor the reasonable market value, and deprive defendant each month of the difference between a rental that is the fair market value and the maximum rent, and are further unconstitutional and void in that they violate the Fifth Amendment to the Constitution of the United States, thus taking defendant's private property without due process of law and without just, or any, compensation.

16. Defendants in order to avoid unnecessary repetition, refer to and include in each paragraph and in each defense the statements, denials, admissions and allegations in each of the other paragraphs and defenses.

17. Having fully answered, defendants pray that the complaint be dismissed and that they be sent hence with their costs.

(s) Paul S. Knight,
PAUL S. KNIGHT,

*Attorney for the Defendants, 806 Williamson Building,
Cleveland, 14, Ohio, PProspect 3438.*

Plaintiff acknowledges receipt of copy of Answer of Defendants this 27th day of August 1947.

(S) SANFORD S. SIMS,
per J. J. GOULD,
Attorney for Plaintiff.

21-A In the District Court of the United States for the
Northern District of Ohio, Eastern Division

No. 25073—Civil Action

FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE OF THE HOUSING
EXPEDITER, PLAINTIFF

vs.

THE CLOYD W. MILLER COMPANY, A CORPORATION AND CLOYD W.
MILLER, DEFENDANTS

Transcript of hearing

Filed Dec. 18, 1947

Transcript of proceedings before Hon. Paul Jones, Judge of said
Court, on Monday, July 21, 1947, 10:00 o'clock A. M., on motion
for preliminary injunction.

Appearances

On behalf of the plaintiff: Sanford S. Simms, Esq., Paul Marshall, Esq.

On behalf of the defendant: Paul S. Knight, Esq.

21-B The COURT. All right, what is the matter for this morning?

Argument on behalf of plaintiff

Mr. SIMMS: If the Court please, the complaint in this action, together with the motion for preliminary injunction, has been filed by the Government against Cloyd W. Miller Company, a corporation, and Cloyd W. Miller, individually, who is the president and duly authorized agent of the Cloyd W. Miller Company. The defendants are the landlords of certain housing accommodations located at 1871 East 97th Street and also known as 9797 Newton Avenue in the City of Cleveland.

The defendants, Your Honor, did on July 2nd—that is they dated a letter July 2nd and distributed these letters to all of the tenants in the subject housing accommodations, as well as sent a copy to all of the Congressmen on the Banking and Currency Committee of the Senate and House, and also to the press. It is this letter that is the basis, Your Honor, of the complaint and the motion for the preliminary injunction which has been filed.

21-C Our action is brought pursuant to Section 206 (a) and (b) of the Housing and Rent Act of 1947 which became effective on July 1, 1947. It is our contention that the acts of the defendants in preparing, writing, mailing this letter, which makes

certain demands upon tenants, is in direct violation of the Housing and Rent Act of 1947 and is in direct violation of the Controlled Housing Rent Regulation, the rent regulation which controls rooming houses and other establishments. The two regulations which I refer to were issued by the Housing Expediter pursuant to the authority vested in him by the Housing Act and the Rent Act of 1947.

Section 206 (a) of the Act provides that it shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under Section 204.

Section 204 provides, in part, that during the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947.

The defendants, through counsel, together with counsel for plaintiff, entered into a stipulation, and paragraph two of the stipulation provides that the maximum legal rents for the said housing accommodations, as fully set forth in the complaint, and as referred to in plaintiff's motion for a preliminary injunction, are correct, having been so registered by the defendants and are the maximum legal rents as established in the Rent Regulation.

Therefore, whatever the registered rents were on June 30th, 1947, for the several furnished and unfurnished apartments in the housing accommodations described in the complaint and the motion were in effect on June 30, 1947.

Section 2 (a) of the Controlled Housing Rent Regulation, which appears, Your Honor, in volume 12 of the Federal Register on Page 4331, reads that regardless of any contract, agreement, lease, or other obligation, heretofore or hereafter entered into, no person shall offer, demand, or receive, any rent for or in connection with the use or occupancy on and after the effective date of this regulation of any housing accommodation within the defense rental area higher than the maximum rental provided by this regulation, and no person shall offer, solicit, attempt or agree to do any of the foregoing. Lower rents than those provided by this regulation may be demanded or received.

Section 2 (a) of the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments, the entire regulation appearing also in volume twelve of the Federal Register on page 4302, Section 2 (a) also provides that regardless of any contract, agreement, lease, or other obligation heretofore or hereafter en-

tered into, no person shall offer, demand, or receive, any rent for or in connection with the use or occupancy on and after July 1, 1947, of any rooms subject to this regulation and within the defense rental area higher than the maximum rents provided by this regulation, and no person shall solicit, attempt to do or 21-F agree to do any of the foregoing. That is, in part, the regulation.

Section 206 (b) is the authority; Your Honor, for the bringing of this action, and it provides that whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which will constitute a violation of subsection (a), which I read to Your Honor, he may make application to any Federal, State, or Territorial Court of competent jurisdiction for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice, a permanent or temporary restraining order of the Court shall be granted without bond.

The letter which I referred to, Your Honor, which was dated July 2, 1947, and which was mailed by the defendants on or about July 6th or 7th, 1947, is, I believe, Your Honor, without any equivocation or peradventure of doubt a vicious diatribe 21-G replete with invectives and bitterness, and purely a harangue upon the congressmen who participated in the enactment of the Act, upon the persons who have been delegated and designated to administer the Act, and upon such other employees who, along the line, have as a duty to administer the Act and to enforce it, as well as a harangue upon the Act itself. I refer specifically, Your Honor, to the last paragraph in the letter, which reads:

"This social nonsense of preempting our property has ceased to be funny. Owners, we set our charges for space for August 1947 and thereafter until further notice at 40% higher for suites, and 60% higher for furnished rooms. We shall hold each tenant responsible for the increase, and if possible make you all parties to a constitutional test of the law. You have already accepted about \$10,000 of rebates," and so on. That, Your Honor, is a specific and direct demand upon the several tenants occupying both the furnished and unfurnished suites in the housing accommodation referred to in the complaint, definitely and unalterably fixing the rent for the unfurnished suites to be 40% higher than the 21-H maximum legal rents and 60% higher for the furnished rooms, and there are several furnished rooms and several unfurnished rooms in these housing accommodations. There can be no doubt but what the landlord intended to extract from the

tenants this increased rent, which is diametrically opposed to the purpose of the regulation, as set forth in the rent regulation.

Incidentally, the stipulation further provides—and I presume the Court has read it—

The COURT. Yes.

Mr. SIMMS. That the Housing and Rent Act of 1947 was effective July 1, 1947 and that the Controlled Housing Rent Regulation and the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments became effective July 1, 1947. It is further stipulated that the letter dated July 2, 1947, and addressed to all tenants of the Cloyd W. Miller Company, 1871 East 97th Street, a copy of which letter is attached to the affidavit of Mr. A. L. Greenspun, attorney in our office, which affidavit is part of the 21-I motion for preliminary injunction, is a true and correct copy of the letters prepared and mailed and issued by the defendants.

It is my understanding that the only contest to this—rather, that the only reason that no consent to the entry of a preliminary injunction by the defendant was because they are contesting the constitutionality of the Act. I am not completely unmindful, Your Honor, that you realize the import of this case. I don't think it is any longer a local incident. In fact, this case has been publicized to great extent in the newspapers not only in Cleveland, but throughout this entire region, and I might say, further than that, that the various agencies have gathered up the information concerning this case, to be publicized. I feel that the eyes and ears of all landlords and tenants are today focused in this direction wanting to know what will happen to the landlord who indiscriminately demands a rent for the next rental period which is in excess of that permitted by the Act and the Regulation, when the landlord has not complied with the regulation and has not stayed within the limits of increase which the Act permits.

21-J I believe the tenants too will wonder "what is going to become of us if these demands are indiscriminately made, and will we have to pay these excess demands, these demands for excess rent?"

It is on this basis and these contentions, Your Honor, that I submit that the order for preliminary injunction should be entered against the defendants who are the landlords of these accommodations.

Colloquy

The COURT. The stipulation does not admit that this property is in the defense area as understood by the definition of the Act. Is that conceded?

Mr. KNIGHT. May it please Your Honor, we make no contest on any of the facts.

The COURT. I see.

Mr. KNIGHT. We appear here this morning only for the purpose of saving our rights, at the proper time to contend that the law under which the rents are fixed, and so on, is unconstitutional.

The COURT. That has been stated to me in an unofficial way, but I didn't want to assume that was so without your statement.

21-K **Mr. KNIGHT.** That is entirely correct. I understand the law is that the question of constitutionality must be raised at the first opportunity.

The COURT. That's right.

Mr. KNIGHT. And that is the reason we are here this morning contesting this entry.

The COURT. Well, was it the thought of either or both sides that this Court hear this question and decide it at once?

Mr. SIMMS. No, Your Honor; I don't think we expected the Court to make the determination so far as the case is concerned at this time. We are only here to get the preliminary injunction, to remain in effect until such time as that issue has been determined by this Court.

The COURT. If the questions of constitutionality of the law are to be deferred until the parties can adequately present their sides, then for the purposes of the preliminary injunction the law stands. I see no other way to handle the matter. I do not understand that the defendants are opposing the preliminary injunction, but they do not desire to agree to it pending the disposition of the ultimate question.

21-L **Mr. KNIGHT.** I think that's a correct statement, Your Honor. I do want to state, of course, that the defendants have no intention of doing anything further than what has been done, which might be deemed a violation of the Act. We are not going to attempt to raise any further question.

The COURT. I have, of course, in anticipation of the hearing, made some brief examination of both the law and the decisions of the Courts in respect to the preceding law, the Rent Control Act of 1946, which is referred to in this Act, and I have formulated in my own mind a query upon which I think the question may ultimately turn. If this Act can be held to stem from the war powers of the Congress, then I think there is adequate precedent by decisions of the higher Court that the Act would be considered as within the power of Congress validly to enact. If the statute has, in a legislative sense or in fact, been severed from the congressional war powers and is a new act standing by itself, enacted in times in which no emergency exists, even though it be called an emergency, then the question is whether it is

21-M within the constitutional power of Congress to regulate local affairs, such as local rents.

That, it seems to me, at least at first hand, to be the question that is involved in the consideration of the constitutionality of this statute. Do I make myself clear as to where I think the matter turns?

Mr. KNIGHT. Yes.

The COURT. Do you have any suggestion now that I am not directing my processes along the right lines that must be followed, or will it be the contention of the Government that regardless of whether this law is the child of the congressional war powers, still, it being a law of Congress, Congress having stated that an emergency exists without defining what the emergency is, that it still has constitutional validity? Is that the position?

Mr. SIMMS. I understand the reasoning of the Court and, of course, the Government's stand will be that it is constitutional in every respect, both from the standpoint of Congress having the right to enact it and the fact that an emergency still exists today, a state of emergency has not been declared to have ended

21-N as prescribed by the War Powers Act.

The COURT. Well, will it be the contention of the Expediter that it does stem from the war powers of Congress, and that the emergency referred to is the emergency resulting from the war and the dislocation resulting therefrom?

Mr. SIMMS. Yes, that's true.

The COURT. That's what I want to have some help on.

Mr. SIMMS. Yes, Your Honor.

The COURT. Because, to recapitulate or restate what I said before, it seems to me, as a matter of first impression, that if this statute is to be considered a new act, independent of any congressional war powers, that then the question comes down to whether or not Congress has any constitutional power to regulate local rents merely by saying an emergency exists without defining what emergency. That's the point that is going to trouble me.

Now, it is true that in an early case on the old Emergency Price Control Act, I believe in 1942, which, of course, was enacted during the war, the Emergency Court held that the Congress had 21-O the power under the constitution to fix maximum rents for housing accommodations. Now, that Act expired, the Act of 1942, and it was followed by the so-called Emergency Act of 1946. That may not be the exact title but the housing act of 1946. I notice that this Act does not say it's an amendment to the Act of 1946, or that it's an amendment to the Act of 1942. It's title two of an act called the Housing and Rent Act of 1947.

Mr. SIMMS. Yes, that's correct.

The COURT. Under declaration of policy, section 201 (a) it states that Congress hereby reaffirms the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged control over rents would be inconsistent with the return to a peacetime economy and would tend to prevent the attainment of the goals herein declared. A declaration of policy such as that doesn't mean that it is the policy of Congress to extend the control of 1946 or 1942. That's a policy of Congress to reduce the controls. That's one of the questions that's going to bother me. It is true it does refer, down in subsection (b) to this fact, that at the same time Congress recognizes that an emergency exists and 21-P that for the prevention of inflation or for the achievement of a reasonable stability for the fair level of rents during the transition period, as well as the attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense rental areas. That is the only word in the section that gives a hint that they are acting under the war powers.

Mr. SIMMS. Yes, sir.

The COURT. The fact that they apply it to housing accommodations in defense areas. Except for that, there is no definition of what they mean by an emergency. Well, I'm just talking, throwing out those ideas for the benefit of counsel.

Mr. SIMMS. We welcome them, Your Honor.

The COURT. Of course, there is the other rule which this Court must consider, and that is in determining the constitutionality or unconstitutionality of an act of Congress the Lower Courts have been enjoined to uphold, generally, the acts of Congress unless there is a doubt which amounts to a conviction that the statute cannot stand. In other words, stating it another 21-Q way, if the Lower Court has some doubt as to the constitutionality of a statute, then the injunction of the Highest Court is that the Lower Court should determine that it is constitutional and let the final court of decision determine where the answer lies. This does not mean, however, that the Lower Courts are not to give voice to their convictions in regard to legislation, but it is a salutary rule which I think I have written down here. It has been written that the age-old rule is that doubts as to constitutionality are to be resolved in favor of upholding the constitutional validity of congressional measures.

So that those are challenges which will be presented. But on the facts which have been presented here for consideration, I see nothing for the Court to do but to grant the petition for preliminary injunction for the reason that the postponement of the decision as to whether or not the Expediter has the right to enjoin

the proposals of the defendants, has a constitutional power to do so, requires that the law must stand until that question is determined. So the motion for preliminary injunction will be granted.

21-R Mr. SIMMS. Thank you, Your Honor.

The COURT. Will you prepare the order?

Mr. SIMMS. I have the order prepared.

The COURT. Have you seen the order?

Mr. KNIGHT. No, Your Honor.

The COURT. I understand that the defendant has taken until September 1st to file an answer to the complaint.

Mr. KNIGHT. That is correct, Your Honor. It seems to me that the entry should be on the application.

The COURT. I will hear your objection to it.

Mr. KNIGHT. The order reads: "Now therefore, it is ordered, adjudged and decreed that the defendants, The Cloyd W. Miller Company, a corporation, and Cloyd W. Miller, their agents, servants, employees, and all persons in active concert or participation with said defendants be, and they are hereby, enjoined from directly or indirectly soliciting, demanding, accepting or receiving any rent in excess of the maximum rent prescribed by the Controlled Housing Rent Regulation and the Rent Regulation for

21-S Controlled Rooms in Rooming Houses and other Establishments, as heretofore or hereafter amended, or in excess of the maximum rent permitted by any other regulation or order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947; as heretofore or hereafter amended or extended or superseded, or from otherwise violating the regulations."

The thing that is to be enjoined here, as I understand it, is the increasing of rent beyond the maximum rent now established.

The COURT. That's correct. It should be, I think, limited to just what you object to that they propose to do. That's sort of an omnibus clause that you have in there which I don't think is justified under the circumstances.

(Discussion had).

The COURT. I think the last part there can be deleted, striking out everything after "superseded". Is that your understanding, Mr. Knight?

Mr. KNIGHT. That's correct, Your Honor.

The COURT. Then put a period after "superseded" and the language "or from otherwise violating the regulations" and so on, those last three lines and a fraction go out.

21-T Mr. KNIGHT. That's all right, Your Honor.

The COURT. It is my understanding from the statement of counsel that there is no present intention of doing anything further in the matter until this question is decided.

Mr. KNIGHT. Not at all, Your Honor.

The COURT. It isn't necessary for counsel to approve the order as long as it is done here in open Court. Anything further in the matter?

Mr. SIMMS. That's all, Your Honor.

The COURT. You are going to file your answer by September 1st?

Mr. KNIGHT. If it's possible.

The COURT. What about your briefs? Do you want to file briefs? I don't suppose you can until the answer is in?

Mr. SIMMS. Not very well.

Mr. KNIGHT. I would like to have all the time I can reasonably have to prepare a brief.

(Discussion had.)

The COURT. Could you file your brief by the first of October? Would that be adequate?

Mr. KNIGHT. I think so.

21-U The COURT. If you want more time you can ask for it.

Mr. KNIGHT. Very well.

The COURT. Then you can file yours within a short time after that?

Mr. SIMMS. Yes, Your Honor.

The COURT. The answer, of course, will go to the merits of the bill of complaint.

Mr. KNIGHT. That's right.

The COURT. Very well.

[Reporter's certificate to foregoing transcript omitted in printing.]

22 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Finding of facts and conclusions of law

Filed Dec. 1, 1947

Defendants are the owners and manager, respectively, of an apartment building situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and in July 1947, they notified the tenants that their respective rents would be increased on August 1, 1947, to an amount in excess of the maximum rents that had been fixed therefor.

This action was filed by the Expediter to restrain such increase of rents.

The operation of the apartment building is carried on entirely within the State of Ohio and both the building itself and its

management are entirely intra-state. The maximum rentals were fixed at the rentals in effect on July 1, 1941, and there has been no increase or decrease in the rentals charged since that date, and they were in effect on June 30, 1947. The apartment building had for years prior thereto been fully occupied by tenants.

The cost of operation, of supplies, of repairs and replacements had substantially increased since July 1, 1941, and since the date that the maximum rentals were fixed; and the suites are now readily rentable but for the Act, at substantially higher but reasonable rentals.

Actual hostilities of the war ceased prior to December 31, 1946, and on that date the President proclaimed the termination of hostilities.

There is no factual issue and the allegations of fact in the complaint and in the answer are taken as true. The stipulation dated July 21, 1947, used at the hearing for preliminary injunction, stipulates that there is no waiver of defendants' right to
23 • contest the constitutionality of the Housing and Rent Act of 1947.

Reference is made to the opinion of the Court dated November 20, 1947.

Conclusions of law

The Court finds as a matter of law, as more particularly appears in the opinion dated November 20, 1947, that the Housing and Rent Act of 1947 is new legislation; is in no way tied up with any war powers of Congress and has no constitutional basis for its validity; that no clause of the federal constitution gives Congress the power to regulate local rents in peacetime and that the technical condition of war since the President's proclamation of the termination of hostilities does not confer this power upon Congress.

That Congress did not rely upon its war powers in enacting the law but fixed its termination without regard to official termination of the war.

That the Act is unconstitutional as exceeding the power of Congress and also in that it contains an unlawful delegation of powers to the Expediter and in that its effect is the taking of private property contrary to the provisions of the Constitution.

Reference is made to the Court's opinion dated November 20, 1947.

(S) PAUL JONES, Judge.

Copy of redrafted findings acknowledged December 1, 1947.

(S) PAUL MARSHALL,
Attorney for Plaintiff.

[File endorsement omitted.]

Civil No. 25073

FRANK R. CREEDON, HOUSING EXPEDITER, PLAINTIFF

vs.

THE CLOYD W. MILLER COMPANY, A CORPORATION, CLOYD W. MILLER,
DEFENDANTS

Opinion

Filed Nov. 20, 1947

JONES, J.:

In this action the Housing and Rent Act of 1947 has been challenged as unconstitutional because it undertakes to fix and regulate local rentals and interferes with local affairs and rights not subject to congressional power. The defendants, against whom a permanent injunction is sought, announced to their tenants that on August 1, 1947, the rentals in suites of the defendants' apartment in the City of Cleveland, Ohio, would be increased by percentages or sums and methods contrary to the express provisions of the Housing Act of 1947 and regulations authorized thereunder.

A preliminary injunction was granted on July 21, 1947, without contest and without a hearing on the questions now raised by the answer of the defendants, posing the constitutional question. The matter, therefore, is before me for final determination on the pleadings, there being no factual controversy. See stipulation dated July 21, 1947.

The Housing and Rent Act of 1947 consists of two titles: Title 1 deals with amendments concerning housing loans, priorities, etc.; Title 2 sets forth the policy of and authority for the control of rents and evictions by the Housing Expediter.

In Section 201 of Title 2, Congress reaffirms the declaration in the Price Control Extension Act of 1946 concerning the undesirability of unduly prolonged controls in peace time. However, "Congress recognizes that an emergency exists" and that further controls are desirable.

Under Sections 201 and 202 of Title 2, it is not possible for the Housing Expediter to extend rent control to any area which had not been designated a "defense rent area" prior to March 1, 1947, and in which rents were not regulated under the Emergency Price Control Act on March 1, 1947.

25 Section 203 (a) provides:

"After the effective date of this title, no maximum rents shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations."

Under Section 204 (c) the Housing Expediter is authorized and directed to remove any or all maximum rents before this Title ceases to be in effect if, in his judgment, the need for such controls no longer exists. The remainder of Title 2 consists of enforcement and eviction provisions.

Section 206 (b) authorizes the Housing Expediter to apply for an injunction whenever in his judgment any person has engaged or is about to engage in an act in violation of subsection (a) of Section 206 which prohibits the demand or receipt of rent in excess of the prescribed maximum rent.

The power of Congress to enact legislative measures is not lightly to be questioned. Only if some substantial constitutional right of the citizen has been infringed or impaired should the courts strike down an act of the Congress. What the court thinks about the law is of no consequence if the congressional measure does not infringe the constitutional rights of the defendants.

It is contended that the continuance of rent regulation stems from the war powers earlier exercised by the Congress and that there has not yet been any official termination of the war; but the President's proclamation of the termination of hostilities was issued on December 31, 1946, and although this may not have been an official termination of the war, nevertheless it inaugurated peace-in-fact.

In the absence of any words or provisions to that effect in the new rent control Act there is no basis for a conclusion that the Congress was intending to act under its war powers. The Act is not by any express words or implied provisions tied up with any war powers of the Congress. It gives, as one might say, the kiss of death to rent regulations but hangs on for a few months with an impotent embrace. The Act speaks of the existence of an emergency without any statement of what the emergency is. If Congress was intending to continue the exercise of war powers residing within its constitutional prerogative, there are no words, and no fair implication may be found in the provisions of the Act, to support such intention. The Act of 1946 and earlier Acts

26 were allowed to lapse. They were not amended or extended.

Section 203 provides that the authority to fix maximum rents under the Emergency Price Control Act of 1942 was to be terminated on the effective date of the 1947 Rent Act. This is new legislation with no plausible constitutional basis for its valid-

ity. It has been stated that courts will take judicial notice of the fact that the war officially has not been terminated; but under the guise of an artificial judicial notice of an existing emergency not named, courts should not indulge in the deception of a fiction not supported by facts.

In recent years that have gone many thoughtful people have questioned the constitutional right of Congress to authorize local rent control. The Great Emergency of the war rather influenced patriotic people to submit to such regulation although believing that it was, even in war time, beyond the reach of federal congressional or executive power. From the earliest times high legal authorities have held that the existence of a state of war did not nullify the provisions of the Constitution. How now can it be asserted that there is a single clause in the Federal Constitution, plausibly interpreted, that gives the government the right to regulate local rents in peacetime?

It has been confidently asserted that in peacetime there should be no emergency that the intelligent application of sound economic principles could not overcome within the framework of constitutional government. There is nothing in this law that stems from constitutional origin or power. The emergency created by housing shortage came into existence long before the war. It was not wholly due to war conditions and property required by the government for low-cost housing with low rentals during the war was condemned and compensation paid the owner. What, in effect, the Act of 1947 does is to provide low rentals for certain groups without taking the property or compensating the owner in any way. To impose federal restrictions upon the free use of the defendants' property is as effective a taking as to condemn it.

That the Congress was not relying upon war powers is evident from the fact, among others, that it provided for a termination of the Housing and Rent Act of 1947 without regard to the official termination of the war and also provided even that the Housing Expediter be "authorized and directed to remove any or all maximum rents before this title ceases to be in effect" if, in his judgment, the need for such controls no longer exists (Section 204 (c)).

Thus it is left to the judgment of the Expediter, 27 throughout the nation to determine when the emergency is over in respective localities. The Act in this respect lacks in uniformity of application and distinctly constitutes a delegation of legislative power not within the grant of Congress. Even the policy of Congress, as expressed in the words of Section 201 of the Act, is inconsistent with an intention to continue control and regulation until the official end of the war.

The right to control local affairs reserved to the states by the Constitution has been pretty much emasculated by the extension of

Federal power. Certainly if the rights of the defendants, as guaranteed by the Constitution, are to be restored, such control and regulation must be terminated. If local rent control and regulation are to be continued until what are asserted to be the evil effects of the war shall have passed away, there is no hope of an early restoration of the constitutional rights of these defendants.

Doubts which earlier I entertained of the constitutional validity of the Housing and Rent Act of 1947, by examination and study, have been crystallized into a conviction that it has no constitutional support in any provision of that instrument.

While it is true that the Act is to expire in a few months, there is all the more reason for a speedy decision by the court and before the question becomes moot and of no benefit to those whose rights are at stake.

My considered judgment now is that the Act is without constitutional validity and that the plaintiff is not entitled to the relief demanded.

Accordingly, the preliminary injunction heretofore granted will be dissolved and the complaint dismissed.

(S) JONES,

United States District Judge.

NOVEMBER 20th, 1947.

28 In the District Court of the United States for the Northern
District of Ohio, Eastern Division

[File endorsement omitted.]

Civil No. 25073

FRANK R. CREEDON, EXPEDITER, PLAINTIFF

vs.

THE CLOYD W. MILLER COMPANY, A CORPORATION, CLOYD W.
MILLER, DEFENDANTS

Settlement and approval as to form of the judgment

Filed Dec. 1, 1947

The Court having on November 21, 1947, finally determined the issues in this cause upon the pleadings, there being no factual dispute, and having found that there is no constitutional basis for the Housing and Rent Act of 1947 and that it is unconstitutional, and this being determinative of the issues in the cause, and that for this reason the preliminary restraining order heretofore granted on July 21, 1947, will be dissolved, and the complaint will be dismissed.

Now, therefore, it is considered, adjudged and decreed that the Housing and Rent Act of 1947 is unconstitutional; that the temporary restraining order heretofore issued on July 21, 1947, be and it is hereby dissolved and that the complaint of the plaintiff be and it is hereby dismissed at the costs of the plaintiff, for which judgment is rendered, and it is ordered that judgment be entered in accordance herewith.

(S) PAUL JONES, *Judge.*

ACKNOWLEDGMENT OF SERVICE

Plaintiff hereby acknowledges service of a copy of the attached Settlement and Approval as to Form of the Judgment this 28th day of November 1947.

(S) PAUL MARSHALL,
Attorney for Plaintiff.

29

In United States District Court

[Title omitted.]

[File endorsement omitted.]

Order substituting party plaintiff

Filed Dec. 1, 1947

The application of Tighe E. Woods, Acting Housing Expediter to be substituted as plaintiff herein having come on for hearing this 1st day of December 1947, and it appearing to the Court that said applicant is the duly appointed and qualified Acting Housing Expediter; that Frank R. Creedon, the plaintiff herein, ceased to hold the office of Housing Expediter, Office of the Housing Expediter, on October 31, 1947; that there is substantial need for continuing and maintaining this action; and that defendant has been given due notice of this application:

Now, therefore, it is hereby ordered that said applicant in his capacity as Acting Housing Expediter, Office of the Housing Expediter, be and is hereby substituted as party plaintiff herein in the place and stead of Frank R. Creedon, Housing Expediter, Office of the Housing Expediter.

(S) PAUL JONES,
Judge of the United States District Court.

Dated this 1st day of December 1947.

30

In United States District Court

[Title omitted.]

[File endorsement omitted.]

Order staying execution of judgment

Filed Dec. 8, 1947

This cause came on for hearing on plaintiff's motion for a stay of execution of the judgment entered by the court on December 1, 1947, dissolving a preliminary injunction theretofore entered by the court and dismissing plaintiff's complaint.

In consideration whereof the court finds that there is probable ground for believing the allegations set forth in plaintiff's motion, and that unless the execution of said judgment is stayed pending plaintiff's appeal to the Supreme Court, there will be continued and widespread violations of the Housing and Rent Act of 1947 and the rent regulations issued pursuant thereto, by others than the defendants and by reason thereof the court finds that plaintiff's motion is well-founded and should be and is hereby granted.

Now therefore it is ordered, in accordance with the provisions of Rule 62 (a) of the Rules of Civil Procedure that the execution of the judgment of the court entered on December 1, 1947 dissolving a preliminary injunction theretofore entered by the court and dismissing plaintiff's complaint be and is hereby stayed until plaintiff's appeal from said judgment is docketed in the Supreme Court of the United States, but not to exceed thirty days from the date of this entry.

(S) JONES,

Judge, United States District Court.

Entered: December 8th, 1947.

31

In United States District Court

[Title omitted.]

[File endorsement omitted.]

Petition for appeal

Filed Dec. 17, 1947

Tighe E. Woods, Acting Housing Expediter of the Office of the Housing Expediter, an agency of the Government of the United States of America created by law, plaintiff herein, considering himself aggrieved by the final judgment of this Court entered on December 1, 1947, does hereby pray an appeal from

said final judgment to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the judgment erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that this appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Filed at Cleveland, Ohio, this 17th day of December 1947.

(S.) Paul Marshall,
PAUL MARSHALL,
Attorney for Plaintiff.

51

In United States District Court

[Title omitted.]

[File endorsement omitted.]

Assignment of errors

Filed Dec. 17, 1947

Tighe E. Woods, as Acting Housing Expediter, Office of the Housing Expediter, plaintiff in the above-entitled cause, in connection with his petition for appeal to the Supreme Court of the United States, hereby assigns error to the final judgment of said District Court entered on December 1, 1947, in the above-entitled cause, and says that in the entry of the final judgment the District Court committed error to the prejudice of the plaintiff, in the following particulars:

1. The Court erred in dismissing the complaint herein on the ground that Title II of the Housing and Rent Act of 1947 was invalid.

2. The Court erred in dismissing the complaint herein on the ground that Title II of the Housing and Rent Act of 1947 was invalid in that,

(a) Upon the termination of hostilities, Congress could no longer exercise its war powers to control rents;

52 (b) The Act made an unconstitutional delegation of power to the Housing Expediter in that it authorizes him to

remove controls in any defense rental area if in his judgment the need for continuing maximum rents no longer exists.

Wherefore, Plaintiff prays that the final judgment of the District Court dismissing the complaint may be reversed and the cause remanded for the entry of a decree enjoining the defendants from violating the Housing and Rent Act of 1947.

Dated this 17th day of December 1947.

(S) Paul Marshall,
PAUL MARSHALL,
Attorney for Plaintiff.

53

In United States District Court

[Title omitted.]

[File endorsement omitted.]

Order allowing appeal

Filed December 17, 1947

This cause having come on this day before the Court on petition of Tighe E. Woods, Acting Housing Expediter of the Office of the Housing Expediter; praying for the allowance of an appeal to the Supreme Court of the United States for a reversal of the judgment of dismissal of the plaintiff's complaint in the above-entitled action, and requesting that a duly authenticated copy of the record of this cause be transmitted to the Clerk of the Supreme Court of the United States; the Court having heard and considered said petition together with petitioner's assignment of errors and statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause, the same having been duly filed with the Clerk of this Court.

It is ordered and adjudged that Tighe E. Woods, as Acting Housing Expediter of the Office of the Housing Expediter, be and he hereby is allowed to appeal to the Supreme Court of the United States from the judgment of this Court dismissing the complaint in this action, that a duly authenticated copy of the record in this case be transmitted to the Clerk of the Court, and that a citation be issued as provided by law.

54

It is further ordered that Tighe E. Woods, Acting Housing Expediter of the Office of the Housing Expediter, be and he is hereby allowed a period of sixty days from the date hereof within which to appeal and docket said appeal in the Supreme Court of the United States.

Dated at Cleveland, Ohio, this 17th day of December 1947.

(S) Paul Jones,
RAUL JONES,
United States District Judge.

55 [Citation in usual form omitted in printing.]

57 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Præcipe for transcript of record

Filed Dec. 17, 1947

To the Clerk, United States District Court, Northern District of Ohio, Eastern Division:

The appellant hereby requests that, in preparing the transcript of the record in the above-entitled cause for his appeal to the Supreme Court of the United States, you include the following:

1. All docket entries showing filing of the pleadings and papers hereinafter set forth, and the entry of the orders hereinafter specified.

2. Complaint.

3. Motion for preliminary injunction.

4. Stipulation of facts.

5. Order of July 21, 1947, granting a preliminary injunction.

6. Answer of the defendants.

7. Transcript of hearing on July 21, 1947.

8. Findings of fact and conclusions of law entered by Honorable Paul Jones, District Judge.

9. Opinion of Honorable Paul Jones, District Judge, filed November 20, 1947.

10. Judgment entered on December 1, 1947, dissolving the preliminary injunction and dismissing the complaint.

58 11. Order of December 1, 1947, substituting Tighe E. Woods, Acting Housing Expediter, as plaintiff.

12. Stay order pending appeal.

13. Petition for appeal.

14. Statement of jurisdiction.

15. Assignment of errors.

16. Order allowing appeal.

17. Citation.

18. Statement calling attention to the provisions of Rule 12, Paragraph 3, Rules of the Supreme Court of the United States.

19. Præcipe for transcript of record.

20. Defendant's agreement as to the jurisdiction of the Supreme Court of the United States.

21. Proof of service of:

(a) Petition for appeal.

- (b) Order allowing appeal.
- (c) Assignment of errors.
- (d) Statement as to jurisdiction.
- (e) Citation.
- (f) Statement calling attention to the provisions of Supreme Court Rule 12 (3).
- (g) Praecipe for Transcript of Record Filed at Cleveland, Ohio, this 17th day of December, 1947.

(S) Paul Marshall,
PAUL MARSHALL,
Attorney for plaintiff.

59 [Clerk's certificate to foregoing transcript omitted in
printing.]

60 IN THE SUPREME COURT OF THE UNITED STATES

*Statement of points to be relied upon and designation of parts of
the record necessary for consideration thereof*

(Filed Dec. 26, 1947)

1. Now comes the Appellant in the above cause and for its statement of points upon which it intends to rely in its appeal to this Court adopts the points contained in its Assignment of Errors heretofore filed herein.

2. Appellant deems necessary for consideration of the foregoing points, and hereby designates for printing, the entire record in this cause, as filed in this Court pursuant to Appellant's praecipe.

Philip B. Perlman
PHILIP B. PERLMAN,
Solicitor General.

DECEMBER 1947.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing motion on Paul S. Knight, Esq., 806 Williamson Building, Cleveland, Ohio, Attorney for appellees, The Cloyd W. Miller Company, a corporation, and Cloyd W. Miller, by mailing a copy to him at his business address.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

[File endorsement omitted.]

[Endorsement on cover:] File No. 52716.. D. C. U. S., Northern Ohio. Term No. 486. Tighe E. Woods, Acting Housing Expediter, Office of the Housing Expediter, appellant, *vs.* The Cloyd W. Miller Company, a corporation, and Cloyd W. Miller. Filed December 22, 1947. Term No. 486 O. T. 1947.